

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
MIDLAND REFINING COMPANY,	)	
CLEAR WATER TRUCK COMPANY, INC.,	)	
ROSANN HARPSTER, and	)	
LEWIS W. WILLIAMS, JR.	)	
	)	
Defendants.	)	
_____	)	

**CIVIL COMPLAINT**

The United States of America, by and through the undersigned attorneys, by authority of the Attorney General of the United States and at the request of the United States Environmental Protection Agency ("EPA"), alleges:

**STATEMENT OF THE CASE**

1. This is a civil action brought pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9607 and 9613, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"). The United States seeks to recover the costs incurred by the United States under Section 104 of CERCLA, 42 U.S.C. § 9604, in responding to the release or threatened release of hazardous substances at or from the site known as the 57<sup>th</sup> and North Broadway Site, located in Wichita, Sedgewick County, Kansas ("the Site"). The United States also seeks a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), holding the

Defendants jointly and severally liable for costs incurred and to be incurred in responding to such release or threatened release of hazardous substances at or from the Site.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue for this action is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim arose in this district, and under Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the release of hazardous substances that give rise to this action occurred in this district.

### **DEFENDANTS**

4. Defendant, Midland Refining Company (hereinafter, Midland) is a corporation organized under the laws of Kansas. Midland is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. Defendant, Clear Water Truck Company, Inc. (hereinafter, Clear Water), is a corporation organized under the laws of Kansas. Clearwater is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Defendant, Rosann Harpster (hereinafter, Ms. Harpster) is an individual residing in Valley Center, Kansas. Ms. Harpster is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

7. Defendant, Lewis W. Williams, Jr. (hereinafter, Mr. Williams) is an individual residing in Perry, Kansas. Mr. Williams is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

### GENERAL ALLEGATIONS

8. The 57<sup>th</sup> and North Broadway Site (Site) is site located on the north edge of Wichita, Kansas.

9. After investigation, EPA determined that soil and groundwater at the Site contained elevated levels of a numerous volatile organic compounds (VOCs).

10. Starting in August 1990, EPA supplied bottled water to homes and businesses at risk of groundwater contamination from the site. EPA supplied bottled water until May 1992, when the City of Topeka finished a project in which it extended its public water distribution system to the affected areas.

11. In 1992, EPA placed the Site on the National Priorities List set forth at 40 C.F.R. Part 300, Appendix B, which was promulgated pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).

12. Upon learning that some homes had not connected to the public water system, EPA in June 1994 ordered Wilko Paint, Inc., and Midland to provide hookups to public water for those homes that had not yet been connected, and to supply bottled water in the interim. Wilko Paint, Inc. and Midland completed the connections in 1996.

13. In 1997, the groundwater contamination was found to have migrated further than previously known, to an area referred to as the Riverview Area, at which time EPA started supplying bottled water to homes in that area.

14. In June 1998 EPA issued an interim record of decision requiring that homes in the Riverview area be hooked up to the public water system. The hookups were completed in 1998.

15. In September 1999 EPA issued a final record of decision calling for treatment of contaminated soils and groundwater. EPA completed construction of the soil and groundwater treatment systems in 2002, and has been operating those systems since then.

16. Since 1977, Defendants Midland and Harpster have been operating a used oil refinery (Midland Refinery), from which hazardous substances have been disposed of and released, at the Site.

17. Since 1965, Defendants Clear Water and Harpster have been operating a trucking business (Clear Water Facility), from which hazardous substances have been disposed of and released, at the Site.

18. Defendant Williams has owned property at the Site for many years (Williams Property). Williams has leased portions of the Williams Property, at various times, to Midland, Clear Water, Wilko Paint, Inc., and Farmland Industries. Hazardous substances have been disposed of and released at the Williams' Property.

19. Section 107(a) of CERCLA provides, in pertinent part:

**§ 9607. Liability**

**(a) Covered persons . . . .**

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section--

(1) the owner and operator of a vessel or a facility, [and]

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

. . . from which there is a release, or threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan . . . .

42 U.S.C. § 9607(a).

20. There have been releases and threats of releases, within the meaning of Section 104 of CERCLA, 42 U.S.C. § 9604, of hazardous substances into the environment at or from the Site.

21. The Site, the Midland Refinery, the Clear Water Facility, and the Williams Property are all facilities within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. The United States has incurred and may continue to incur costs of response, within the meaning of section 101(25) of CERCLA, 42 U.S.C. § 9601(25), not inconsistent with the National Contingency Plan to respond to the releases or threatened releases of hazardous substances at or from the Site.

23. Each of Defendants Midland, Clear Water, and Harpster, is the operator of a facility, and is a person who at the time of disposal of a hazardous substance operated a facility, from which there has been a release or threatened release of hazardous substances, within the meaning of Section 107(a)(1) & (2) of CERCLA, 42 U.S.C. § 9607(a)(1) & (2).

24. Defendant Williams is the owner of a facility, and is a person who at the time of disposal of a hazardous substance owned a facility, from which there has been a release or threatened release of hazardous substances, within the meaning of Section 107(a)(1) & (2) of CERCLA, 42 U.S.C. § 9607(a)(1) & (2).

#### **CLAIM FOR RELIEF**

25. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

26. Under Section 107 of CERCLA, 42 U.S.C. § 9607, each Defendant is jointly and severally liable to the United States for all response costs incurred by the United States in the past or to be incurred by the United States in the future at the Site.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the United States of America, prays that the Court:

1. Enter Judgment in favor of the United States and against the Defendants in the amount of all response costs incurred by the United States at the Site, including interest and the United States' attorney fees, costs, and disbursements in this action;

2. Award the United States a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), holding each Defendant to be jointly and severally liable for all response costs to be incurred by the United States in connection with the Site; and

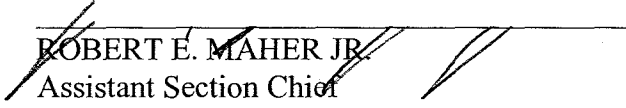
3. Grant such other and further relief as may be just and proper.

Dated: \_\_\_\_\_, 2006

Respectfully submitted,

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